

**BEFORE
THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Implementation of the Subscriber Carrier	}	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	CC Docket No. 94-129
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

In the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42 (rel. March 17, 2003) ("Second Notice"), the Federal Communications Commission ("Commission") asked for comment on a discrete set of improvements to the current carrier selection process. The National Association of State Utility Consumer Advocates ("NASUCA")¹ submitted initial comments on June 2, 2003, and now submits the following reply comments, in support of these changes to the process.

General

SBC Communications, Inc. ("SBC") erroneously seeks to minimize the incidence of slamming. "Given the sheer volume of carrier change orders completed without

¹ NASUCA is an association of 41 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Chapter 4911, Ohio Rev. Code.

customer complaint,” it says, “the FCC's existing TPV requirements are sufficient.” SBC at 1. In fact, despite years of effort, slamming continues to be a persistent and seemingly intractable problem. On a single recent day, April 30, 2003, the Commission issued 91 orders, against some 50 companies, all finding slamming violations. State commissions similarly continue to see a steady stream of complaints.

SBC's argument also erroneously assumes that the complaints received represent the universe of slammed consumers. In fact, slamming is often hard to detect. Nor do all slammed consumers have the time and wherewithal with which to complain. Many if not most slams go unreported and undetected. There is every reason to redouble and intensify efforts to curb and eventually stop slamming.

SBC also misapprehends or mischaracterizes the incentive within the industry to convey incomplete and inaccurate information during the solicitation process. The proposals are unnecessary, SBC says, because “[c]arriers have every incentive to ensure that all of a customer's questions have been answered during the solicitation.” SBC at 3. In fact, solicitations are commonly made by individuals whose compensation is based on sales. The financial incentive for these individuals is to complete the sale.

It is accordingly not surprising, and experience confirms, that solicitations frequently omit key and material terms, particularly regarding price, and at times affirmatively misrepresent and distort key and material terms, particularly regarding price, to the surprise and detriment of consumers. Often, there is classic consumer fraud. Given the financial incentive of those soliciting carrier changes, it is appropriate for the Commission to seek to improve the quality of the understanding and completeness of information exchanged in the third-party verification process.

Qwest Communications International Inc. (“Qwest”) and IDT Corporation (“IDT”) claim that the changes will be costly and burdensome. Qwest at 2; IDT at 2. In fact, the changes are exceedingly modest. They are incremental in character. They require at most a simple and one-time adjustment or adjustments to each company’s existing verification procedures. Any costs and burdens are far outweighed by the potential benefits.

Qwest states that it is not clear whether the proposals are “critical” to the general reliability of the verification process. Qwest at 3. IDT says that the Commission should only implement changes after a showing of minimal burden to carriers and substantial benefit to customers. IDT at 1. Neither of these statements reflects the proper public interest test that should be applied in assessing improvements to the verification process.

Date

SBC and Verizon, among others, object to requiring verifiers to state the date orally during the recorded verification. They claim that other dating mechanisms -- such as “date-stamping” the recording -- offer acceptable alternatives. SBC at 2, Verizon at 1; see also Sprint at 2, WorldCom at 2. Some dating mechanisms, however, are susceptible to alteration after the fact. Regulators should not be required to assess the integrity of differing dating mechanisms. A uniform mechanism minimizes the potential for abuse and alteration. Equally importantly, the purpose of the verification process is to ensure the customer’s understanding of the process. A “date-stamped” tape recording or .wav file does not serve that purpose. An affirmative oral statement of the date on the recording will serve that purpose.

Carrier change

AT&T Corp. (“AT&T”), among others, objects to a requirement that verifiers make clear to a consumer that the consumer is not verifying an intention to retain an existing service but in fact is asking for a carrier change. AT&T at 4-5; see also IDT at 5-6, Sprint at 4-5. Experience confirms that some companies mislead consumers into thinking there is no change of carrier and that the only service being marketed is, for example, a bill consolidation service. Adding a question during the verification process that seeks to prevent consumers from being misled in this way would materially improve the system.

Notice that change can be effectuated without further contact

Verizon objects to the proposal that consumers be asked to verify that carrier changes can be effectuated without any further contact with the consumer once the verification has been completed in full. Verizon at 4; see also, e.g., BellSouth at 4. “This is unnecessary,” Verizon says, “as that is exactly what the consumer would expect anyway.” Verizon at 4. Experience disproves this inaccurate generalization.

Consumers often complain that they asked and were assured during the solicitation portion of the call that no change would be made unless and until they received a written statement of material terms in the mail and had an opportunity to review it and indicate their acceptance or rejection. Consumers also complain that they are told specifically they must give only simple “yes” answers to the verifier. The proposal is well formulated to give consumers a needed opportunity to say “no, that is not my understanding.”

Separate questions

Verizon objects to requiring a separate inquiry and response to each required question. “Some of these questions,” it says, “can easily and logically be grouped together, making the verification process less time consuming for the customer.” Verizon at 2; see also, e.g., IDT at 6. The first consideration should be clarity, not brevity. Experience shows that some companies group many questions together and that questioners at times speak far too rapidly to be understood. With elderly, youthful and disabled individuals often on the other end of the call, the potential for miscommunication is often high. This proposed requirement materially enhances the likelihood that consumers understand what is being asked and respond accordingly.

Defining “interLATA” and “intraLATA”

Verizon claims that requiring verifiers to define “interLATA” and “intraLATA” “would only baffle consumers” and that they already “generally get it.” Verizon at 4. Experience shows, however, that confusion is high. Repeatedly, consumers who thought they changed “long distance” carriers learn after the fact that interLATA was changed but intraLATA was not, or vice versa. Repeatedly, it is months before the problem is identified and solved. The Public Utilities Commission of Ohio (“PUCO”) is right: “Consumers are generally unaware of the meaning of such terminology as interLATA and intraLATA. The verifier should explain the meaning of these terms and confirm that the consumer understands these terms.” PUCO at 6.

Additional information

The PUCO, which like this Commission sits in a particularly well-informed position, urges the Commission to consider including in the verification process additional information, including “the total price for the service and the price for each separate service.” PUCO at 4. NASUCA supports this further suggestion.

Price is a frequent basis on which carrier solicitations and consumer decisions are made. It is a frequent source of complaint. Indeed, many consumers couple a complaint of slamming with a complaint of excessive, at times grossly excessive, pricing following the slam. The unexpectedly high prices are a burden, at times a hardship, for consumers.

Requiring that key and material price information be verified, as in practice it sometimes is, holds promise of reducing the number of complaints and diminishing the incidence of slamming. Charges for international calls, among those most greatly abused, merit specific mention.

Conclusion

Talk America Inc. states that “its [TPV] scripts already incorporate most of the additional items proposed” in the Second Notice. Talk America at 3; see *id.* at 6. The carriers’ complaints about costs are exaggerated, and the benefits to the clarity and certainty of the carrier-switching process from the proposed changes are clear. The Commission should adopt the proposed changes.

Respectfully submitted,

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